

Massachusetts Civil Service Commission

2008 Calendar Year-To-Date Statistics Month-Ending July 31, 2008

Highlights

- Total discipline and bypass appeals pending before the Commission: 285; 27 less than one month ago; and 307 less than one year ago, representing a 52% decrease in appeals pending before the Commission over the past 12 months;
- The Commission continues to close out twice the amount of new appeals filed in CY08, disposing of 313 discipline and bypass appeals during the first seven months of CY08, as compared to 147 new appeals filed during the same time period;
- The Superior Court has issued 17 decisions in 2008 regarding Civil Service Commission decisions. The Court has affirmed all 17 of the Commission decisions.

Massachusetts Civil Service Commission
Open Discipline and Bypass Cases: Month-End Report

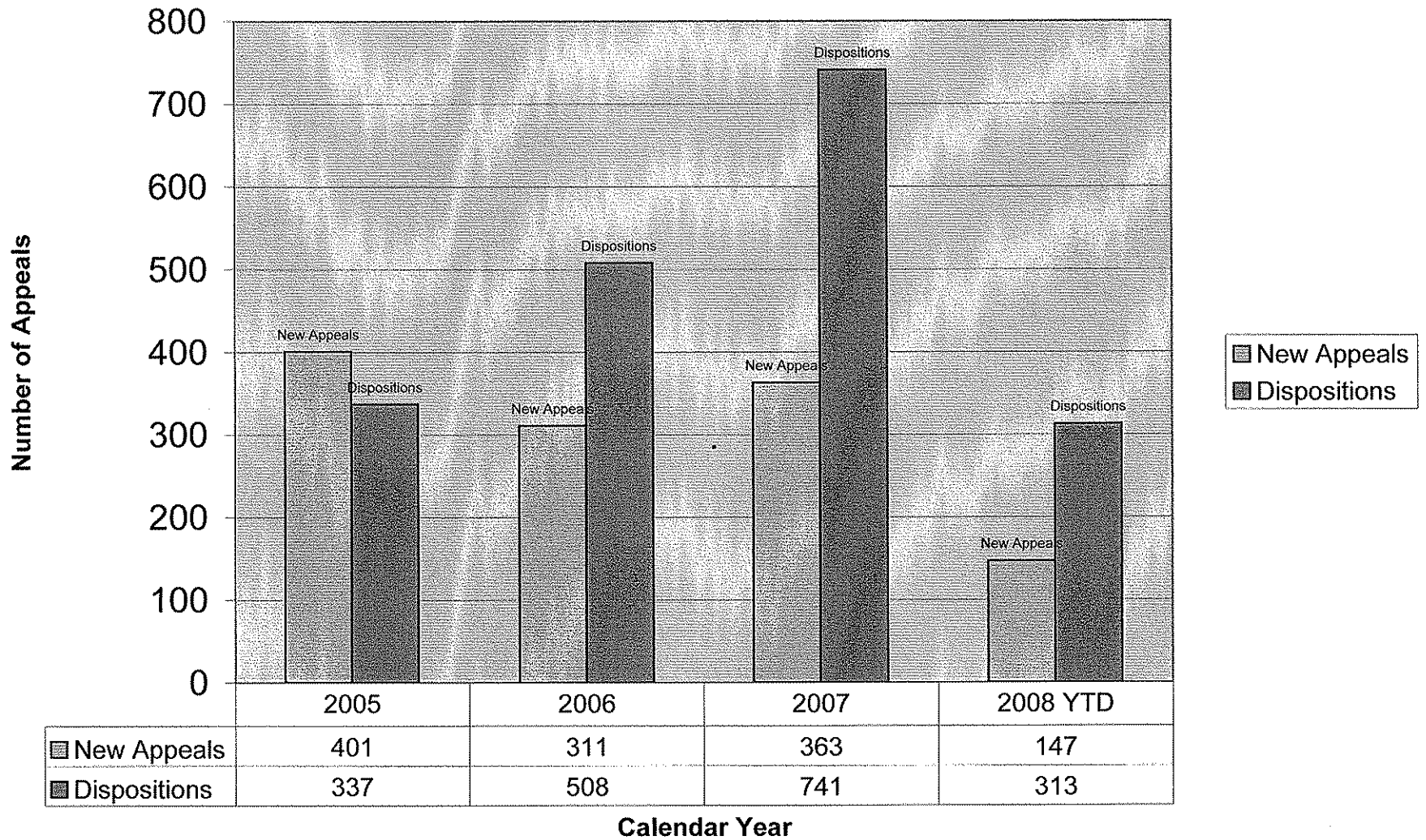
	<u>July 07</u>	Aug 07	Sep 07	Oct 07	Nov 07	Dec 07	Jan 08	Feb 08	March 08	April 08	May 08	June 08	<u>July 08</u>
OPEN DISCIPLINE CASES	293	273	253	245	230	218	201	185	174	175	161	152	147
OPEN BYPASS CASES	299	278	259	240	245	233	214	196	184	168	167	160	138
TOTAL OPEN DISCIPLINE & BYPASS CASES	592	551	512	485	475	451	415	381	358	343	328	312	285

Massachusetts Civil Service Commission
Open Discipline and Bypass Cases: Month-End Aging Report

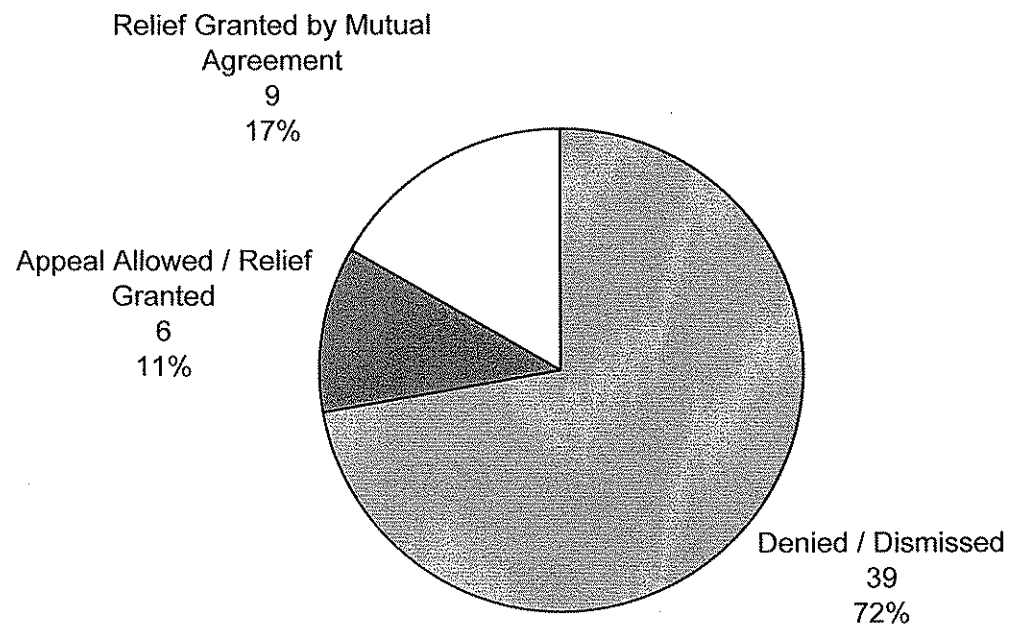
YEAR APPEAL FILED	July 07	Aug 07	Sep 07	Oct 07	Nov 07	Dec 07	Jan 08	Feb 08	March 08	April 08	May 08	June 08	July 08
Pre-2004	69	52	42	38	29	20	18	17	14	12	11	11	11
2004	69	48	40	33	30	25	22	17	15	12	9	8	7
2005	142	116	99	88	84	79	67	58	58	48	45	42	36
2006	143	129	116	101	91	86	73	63	58	52	49	46	36
2007	167	206	215	224	241	241	217	191	172	157	139	122	96
2008	--	--	--	--	--	--	18	35	41	62	75	83	99
Total	592	551	512	485	475	451	415	381	358	343	328	312	285

8/1/08

Discipline and Bypass Cases New Appeals Filed v. Dispositions



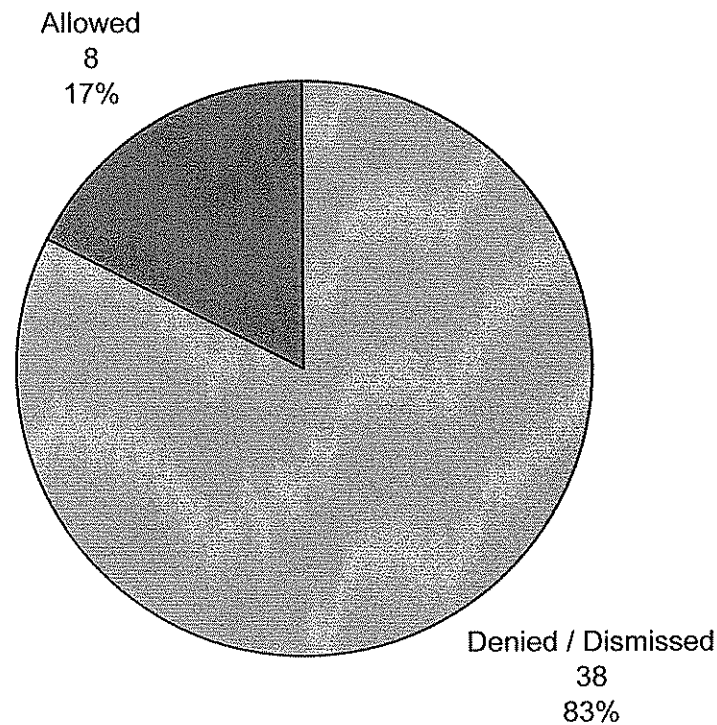
2008 YTD Bypass and Related Appeals Seeking Relief: 54 Decisions



In Calendar Year 2007, 60% of bypass appeals were denied; relief was allowed in 10% of the appeals; and relief was allowed by mutual agreement regarding 30% of the appeals.

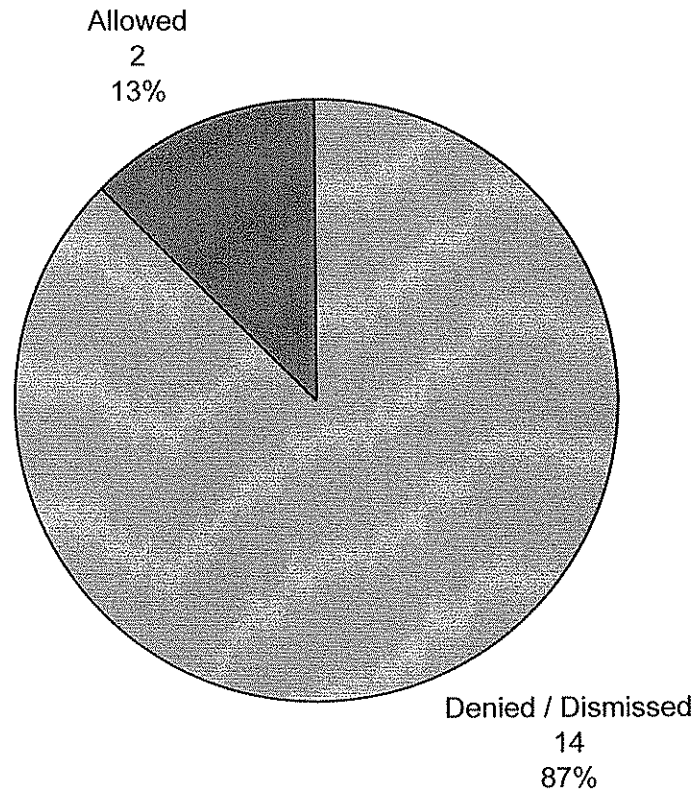
8/1/08

2008 YTD Disciplinary Appeals: 46 Substantive Decisions Allowed v. Denied



In Calendar Year 2006, there were 87 substantive disciplinary decisions; 82% of the appeals were denied; and 18% were allowed; In Calendar Year 2007; 8/1/08 there were 110 substantive discipline decisions; 85% were denied; 15% were allowed

2008 YTD Classification Appeals: 16 Substantive Decisions Allowed v. Denied



In Calendar Year 2006, there were 17 substantive classification decisions; 94% were denied and 6% were allowed; In calendar year 2007, there were 20 substantive classification decisions; 100% were denied
8/1/08

COURT DECISIONS ISSUED SINCE JANUARY 1, 2007 REGARDING APPEAL OF COMMISSION DECISIONS
NUMBER OF COMMISSION DECISIONS AFFIRMED BY COURT – 34 (90%); OVERTURNED / REMANDED – 4 (10%)

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
1/5/07	Suffolk Superior (Judge Locke)	8/17/05	Appellant (Bypass Appeal Allowed)	Gaudette v. Town of Oxford	G-02-298	Henderson	Remanded to Commission for de novo hearing (Appellant failed to appear for remand hearing; appeal was dismissed for lack of prosecution.)	<ul style="list-style-type: none"> Commission conclusion that there was bias not supported by findings; Commission correct in ruling that negative reasons should have been given at time of bypass in this particular case. Court concerned, however, that Commission then proceeded to determine if negative reasons were supported by evidence.
2/8/07	Suffolk Superior (Judge Walker)	1/28/05	Appointing Authority (Termination Upheld)	Ly v. Lowell Police Department	D-01-1317	Henderson	Affirmed	<ul style="list-style-type: none"> Appellant's "Carney Rights" were not violated; issue of whether information was obtained by police department as part of "criminal" investigation or "internal investigation."
2/21/07	Suffolk Superior (Judge Walker)	2/16/06	Appointing Authority (Termination Upheld)	Loughlin v. City of Fitchburg	D-03-10; D-04-274	Henderson	Affirmed	<ul style="list-style-type: none"> Employee was terminated for poor performance, insubordination; rudeness and removing confidential information from files of fellow employees; On appeal to Superior Court, Appellant argued that Commission acted unlawfully by considering illegally obtained evidence (tape-recorded phone conversation); Court ruled that tape was only minimally mentioned in Commission decision and not heavily relied on in making decision; Court referenced credibility determinations made by CSC.

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3/7/07	Suffolk Superior (Judge Fahey)	4/10/04	Appellant (Bypass Appeal Allowed)	Nelson Nahim v. Boston Police Department	G-02-400	Guerin	Affirmed	<ul style="list-style-type: none"> Commission had allowed bypass appeal. Although 209A issued, it was limited in scope and the circumstances surrounding its issuance were subsequently determined to be suspect.
3/14/07	Suffolk Superior (Judge Sanders)	11/24/06	Appointing Authority (Termination Upheld)	Pau G. Chafe v. City of Chelsea	D-05-89	Guerin	Affirmed	<ul style="list-style-type: none"> Commission dismissed disciplinary appeal which was filed four years after termination, far beyond the 10-day filing requirement.
3/13/07	Suffolk* Superior (Judge Cratsley) *Superior Court Decision affirmed by Appeals Court on 4/25/08	10/3/05	Appointing Authority (Promotional Bypass Appeal Dismissed)	Palmer et al v. Department of Correction	G2-03-438	Guerin	Affirmed	<ul style="list-style-type: none"> Court affirmed Commission's decision that DOC promotions were conducted in accordance with applicable provisions of c. 31.
3/26/07	Middlesex Superior (Judge Fischman)	3/11/05	Appellant (30-day suspension overturned)	Metzler v. Lowell Public Schools	D-02-860	Taylor	Affirmed	<ul style="list-style-type: none"> Commission overturned 30-day suspension issued to custodian for charges related to sexual harassment; No credible evidence to support charges; case relied heavily on credibility assessments of various witnesses; Court upheld Commission's decision without much comment.

8/1/08; cases do not include default orders that resulted from failure to appear or failure to prosecute appeal.

Date of Court Decision	Court	Date of Commission Decision	Original Commission Decision In Favor Of?	Case Name	CSC Case No.	Commissioner	Court Decision	Issues
4/23/07	Suffolk Superior (Judge Walker)	10/20/06	Appointing Authority (Layoffs upheld)	Porio, Shea & Trachtenberg v. DOR and HRD	D-02-715; D-02-763; D-02-408	Bowman	Affirmed	<ul style="list-style-type: none"> ▪ Plight of the Provisionals ▪ In regard to layoffs, individuals promoted to provisional positions are considered to have left their permanent position; ▪ Court decision centered on whether the SJC decision in Andrews was retroactive to this case (Timberlane exceptions). Court ruled that CSC correctly determined that Andrews case was effective retroactively.
5/7/07	Suffolk Superior (Judge Cratsley)	6/29/06	Appellant and HRD	Tarpy v. Haverhill and HRD		Bowman	Reversed (Commission Appealing)	<ul style="list-style-type: none"> ▪ Court ruled that Commission (and HRD) were wrong to determine that an individual "shall have been employed" in the next lower position in order to sit for promotional exam, ruling that a retroactive seniority date, previously ordered by the Commission, was sufficient to allow the Appellant to sit for the exam.
5/22/07	Suffolk Superior (Judge MacDonald)	4/25/06	Appointing Authority (Termination Upheld)	Dapkis v. Department of Correction	D-02-793	Marquis	Affirmed	<ul style="list-style-type: none"> ▪ Court affirmed CSC Decision in which it determined DOC had reasonable justification for terminating an employee with a long disciplinary history for falsifying forms regarding an alleged on-duty injury not disturbing the Commission's credibility assessments, which were central to the decision.

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6/7/07	Appeals Court	11/5/04	Appointing Authority (Termination Upheld)	Fierimonte v. Lowell Public Schools	D-03-407	Henderson	Affirmed	<ul style="list-style-type: none"> Appeals Court ruled that the overwhelming evidence of the Appellant's poor work performance was more than ample to support the Commission's decision.
6/21/07	Appeals Court	10/9/03	Appointing Authority (Termination Upheld)	Pearson v. Town of Whitman	D-01-1564	Tierney	Affirmed	<ul style="list-style-type: none"> Appeals Court ruled that Commission was correct in determining that there was substantial evidence justifying termination
6/25/07	Plymouth Superior Court (Judge Powers)	4/20/06	Appointing Authority / HRD	Gillis v. City of Boston and HRD	G-02-587	Taylor	Affirmed	<ul style="list-style-type: none"> Commission's decision was not arbitrary or capricious when it determined that Appellant was not eligible for preference authorized by G.L. c.31, s. 26.
7/6/07	Plymouth Superior Court (Judge McLaughlin)	8/16/05	Appointing Authority (5-day suspension)	Lapworth v. Town of Carver	D-02-417	Guerin	Affirmed	<ul style="list-style-type: none"> Commission possessed substantial evidence to support its conclusions regarding the Appellant's misconduct.
7/12/07	Suffolk Superior Court (Judge Troy)	2/16/06	Appellant (termination overturned)	Mullen and McGuinness v. DOC	D-05-53 & D-05-54	Henderson	Vacated / Remanded	<ul style="list-style-type: none"> Commission decision not supported by substantial evidence; was arbitrary and capricious and exceeded Commission's authority.
8/22/07	Bristol Superior Court (Judge Moses)	3/23/06	Appointing Authority (termination upheld)	Markland v. City of Fall River	D-02-882	Guerin	Affirmed	<ul style="list-style-type: none"> Findings of Commission supported by substantial evidence and were not arbitrary or capricious.

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9/20/07	Suffolk Superior Court (Judge Hogan)	1/10/06	Appointing Authority (upheld decision to bypass)	Anthony Gaul v. City of Quincy	G-02-673	Taylor	Affirmed	<ul style="list-style-type: none"> Appellant was bypassed for reasons related to driving record; 209A; incomplete application; and being a smoker. Commission's decision was "legally sound and was not arbitrary, capricious or an abuse of discretion".
10/30/07	Bristol Superior Court (Judge Kane)	7/7/05	Appointing Authority (upheld denial of request for reclassification)	Nancy Fournier v. Department of Revenue	C-02-558	DALA	Affirmed	<ul style="list-style-type: none"> Substantial evidence for the magistrate to find that Fournier did not perform the duties of the position being sought more than 50% of the time.
10/30/07	Bristol Superior Court (Judge Kane)	7/7/05	Appointing Authority (upheld denial of request for reclassification)	Theresa Hyde v. Department of Revenue	C-02-334	DALA	Remanded	<ul style="list-style-type: none"> Magistrate erred by relying solely on job duties established by DOR and HRD <u>after</u> the Appellant's request for reclassification was required. Case must be re-heard and decided based upon job duties in place at time of appeal.
10/30/07	Plymouth Superior Court (Judge Chin)	6/15/06	Appointing Authority (upheld one-day suspension)	Raymond Orr v. Town of Carver	D-02-2	Bowman	Affirmed	<ul style="list-style-type: none"> Commission did not abuse its discretion when it found that Orr's posting of an offensive cartoon was not activity protected under G.L. c. 150e; Commission did not abuse its discretion by assigning the case to another Commissioner to write decision after a former Commissioner left the Commission; Decision supported by the evidence and not arbitrary or capricious.

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11/26/07	Suffolk Superior Court (Judge Cratsley)	1/12/07	Appointing Authority and HRD (ruled there was no bypass)	James Verderico v. Boston Police Department	G-02-213	Bowman	Affirmed	<ul style="list-style-type: none"> On remand, the Commission was directed to determine if the Appellant would still have been "not reachable" on civil service list based on end of consent decree in City; Commission concurred with HRD that Appellant would not have been reachable and hence, there was no bypass; Court concurred.
12/18/07	Suffolk Superior Court (Judge Brassard)	10/16/06 & 3/15/07	Appointing Authority and HRD (Granted C.S. Permanence to provisional employees and upheld transfer)	BPPA v. City of Boston and HRD	G-06-113; G-07-33; I-07-34	Taylor / Guerin / Bowman / Ittleman	Affirmed	<ul style="list-style-type: none"> On this consolidated appeal, the Court upheld all three Commission decisions related to the merger of the Boston Municipal Police Department with the Boston Police Department; Commission correctly determined that union in this case did not have standing; Commission has "significant discretion" in determining what response and to what extent, if at all an investigation under Section 2A is appropriate; The exercise of authority under Chapter 310 is "largely committed, if not entirely committed, to the informed discretion of the Civil Service Commission".

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1/18/2008	Bristol Superior (Judge Gary Nickerson)	5/18/06	Appointing Authority (Decision not to grant reclassification affirmed)	Daniel Burns v. Department of Revenue	C-03-183	DALA	Affirmed	<ul style="list-style-type: none"> Serving as a “back-up supervisor” did not meet the requirement of the higher classification which specified that the incumbent supervises 1-5 employees; Magistrate’s decision was not arbitrary and was based on substantial evidence.
1/31/08	Appeals Court	1/3/05	Appointing Authority (Decision not to grant reclassification affirmed)	Anne Hartnett v. Department of Revenue	C-03-184	DALA	Affirmed	<ul style="list-style-type: none"> “Assisting” superiors with certain higher level duties does not mean that the employee had the “authority” to perform the duty.
2/4/08	Hampden Superior Court (Judge Carhart)	2/16/06	Appellant (Overturning Termination)	Jason Brouillard v. Holyoke Police Department	D-03-130	Henderson	Affirmed	<ul style="list-style-type: none"> Involves issue of probationary employee becoming tenured at end of probationary period absent written notice by the Appointing Authority; Appellant could not be terminated under the provisions of Section 34 as the notice was sent by the Police Chief, not the Mayor (Appointing Authority)
2/6/08	Suffolk Superior Court (Judge Cratsley)	9/8/06	Appointing Authority (Decision not to grant reclassification affirmed)	Arvanitis & Jacobs v. DOC	C-02-645 & C-02-646	Taylor	Affirmed	<ul style="list-style-type: none"> No memorandum from Court; Commission re-asserted that it does not have jurisdiction over challenges to a <i>reallocation</i> of positions resulting from collecting bargaining agreement

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3/3/08	Suffolk Superior (Judge Hopkins)	7/27/06	HRD	Shea v. HRD	G1-03-219	Bowman	Affirmed	<ul style="list-style-type: none"> G.L. c. 31, § 40 does not require HRD to place an employee's name on every employment list for which the employee is remotely qualified. Rather, they are only required to place the employee's name on the list for the permanent civil service position from which the employee was laid off.
3/12/08	Suffolk Superior Court (Judge Cosgrove)	2/9/07	Appointing Authority (upheld termination)	McCoy v. Town of Wayland	D-05-171	Guerin	Affirmed	<ul style="list-style-type: none"> Court found that: "while progressive discipline is certainly a hallowed precept of labor law, the court is not persuaded that it is necessarily an indispensable prerequisite for dismissal; particularly, where, as here, the violations are serious." The Appellant's undisputed lying and falsification of documents, considered in light of his length of service and prior record as a police officer, sufficed to support this discharge.
3/17/08	Hampden Superior Court (Judge Carhart)	5/17/07	Appellant (Decision to bypass not justified)	Randolph & Shewchuk v. City of Springfield	G-02-215 & G-02-801	Guerin	Affirmed	<ul style="list-style-type: none"> Commission's findings that promotions were marked by improper political and community pressure were not arbitrary or capricious.
3/20/08	Suffolk Superior Court (Judge Brassard)	10/27/06	Appointing Authority (Suspensions upheld)	Ameral & Kiely v. Somerville Police Department	D-03-292 & D-03-289	Bowman	Affirmed	<ul style="list-style-type: none"> No accompanying memorandum from court; Commission decision concluded that the Appellants were untruthful thus justifying their suspensions.

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3/31/08	Suffolk Superior (Judge Macdonald)	5/4/06	Appellant (in part) Suspension reduced from 13 months to 8 months	Reilly v. Department of State Police	D-05-382	Marquis Bowman	Affirmed	<ul style="list-style-type: none"> ▪ The Commission had the Authority to review the Colonel's disciplinary action in general; (G.L. c. 22C, § 13) ▪ Modification justified given reasons articulated by Commission in its decision.
4/29/08	Suffolk Superior (Judge Cratsley)	11/30/06	Appointing Authority (upholding suspension and demotion)	Robert Downer v. Town of Burlington	D-03-188	Bowman	Affirmed	<ul style="list-style-type: none"> ▪ Case involved alleged racial remarks made by Appellant; ▪ Court ruled that facts as found by the hearing officer as well as the credibility determinations made by him provide substantial evidence supporting the Commission's decision.
6/3/08	Middlesex Superior Court (Judge Zobel)	5/26/05	Appointing Authority (upholding termination)	Gregory Ratta v. Town of Watertown	D-02-85	Guerin	Affirmed	<ul style="list-style-type: none"> ▪ Employee was terminated after OUI conviction which followed a drug test failure; ▪ Employee argued disparate treatment; ▪ Court ruled that: "Absent a showing of motivation akin to selective prosecution – of which the record is bare – Plaintiff cannot, by pointing to other, retained employees, avoid the Town's well-grounded decision to terminate him.

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6/27/08	Essex Superior Court (Judge Murtagh)	3/23/07	Appointing Authority (upholding termination)	Paul Murphy v. Salem Police Department	D-03-405	Bowman	Affirmed	<ul style="list-style-type: none"> ▪ Court ruled that decision (to uphold termination) was based on “a rational explanation of the evidence presented in three days of hearings and found in the Commissioner’s findings of fact.”
6/30/08	Suffolk Superior Court (Judge Lauriat)	11/24/06	Appellant (psychological bypass not justified)	Kerri Cawley v. Boston Police Department	G1-06-95	Bowman	Affirmed	<ul style="list-style-type: none"> ▪ The Commission “has not gone so far as to conclude that [the Appellant] is psychologically fit to become a police officer. Instead, the Commission has concluded that [the Appellant] has been deprived of an opportunity to participate in a hiring process that is free from personal bias. This is well within the authority and discretion of the Commission.”
6/30/08	Suffolk Superior Court (Judge Quinlan)	4/20/07	Appointing Authority (upholding 1-day suspension)	Ronald Fries v. Town of Norwell	D-04-529	DALA	Affirmed	<ul style="list-style-type: none"> ▪ The Commission’s decision “was based upon substantial evidence. There was a directive. The plaintiff was aware of the directive. The plaintiff violated that directive without justification or cause... The Commission’s decision was not [arbitrary].”
7/2/08	Suffolk Superior Court (Judge Holtz)	4/5/07	Appointing Authority (upholding promotional bypass for sergeant)	Mark Zielinski v. City of Everett	G2-04-133	Guerin	Affirmed	<ul style="list-style-type: none"> ▪ No evidence of political considerations in bypass decision; ▪ Decision by Commission not arbitrary or capricious.

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7/16/08	Bristol Superior Court (Judge Moses)	3/6/07	Appointing Authority (upholding original bypass)	Frederick T. Preece, Jr. v. Department of Correction	G1-05-5	DALA	Affirmed	<ul style="list-style-type: none"> G.L. c. 276, s. 100C did not preclude DOC from considering Appellant's CORI as, in light of <u>Globe Newspaper Co. V. Pokaski</u>, the Appellant's records were not sealed. In <u>Globe</u>, First Circuit concluded that the first paragraph of this statute, is unconstitutional. Thus, the Appellant's records were not automatically sealed after the Appellant was found not guilty of murder. In re: admissibility of CORI report: Under G.L. c. 30A, agencies are not required to follow the rules of evidence observed by the courts. Evidence may be admitted and given probative effect if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. While Appellant was acquitted of the charges in question, the Commonwealth was held to a higher standard of proving its case beyond a reasonable doubt as compared with the standard of preponderance of the evidence that typically applies to a civil case.

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July 24, 2008	Suffolk Superior Court (Judge Cratsley)	5/18/07	Appointing Authority (Dismissal of appeal based on jurisdiction issues)	Rodrigues and Monteiro v. City of Brockton	G1-04-4; G1-04-5; G1-05-212; G1-05-213	Guerin	Affirmed	<ul style="list-style-type: none"> Commission correctly ruled that there was no actual harm to Appellants whose names were not included on civil service list because their scores were too low, as minority candidates, to be included on list.